

# EXHIBIT R

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

IN RE: . Case No.: 03-10945 (MFW)  
. 821 North Market Street  
FLEMING COMPANIES, INC. et al. Wilmington, Delaware 19801  
Debtor, .  
. Date: July 26, 2004  
..... Time: 9:46 a.m.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

1		
2		
3	Court's ruling on estimation issue	173
4	Court's ruling on confirmation of plan	224
5	<u>WITNESSES:</u>	<u>PAGE</u>
6	EDWARD TED STENGER	
7	Direct Examination by Mr. Paris	47
8	Cross-Examination by Mr. Hogan	61
9	Redirect Examination by Mr. Paris	64
10	Cross-Examination by Mr. Hertzberg	66
11	MICHAEL KENNETH SCOTT	
12	Direct Examination by Mr. Paris	67
13	Cross-Examination by Mr. Hogan	70
14	Redirect Examination by Mr. Paris	75
15	Cross Examination by Mr. Hertzberg	76
16	Recross Examination by Mr. Hogan	79
17	MARK DILLON	
18	Direct Examination by Mr. Liebeler	82
19	Cross-Examination by Mr. Hogan	97
20	Redirect Examination by Mr. Liebeler	114
21	Recross Examination by Mr. Hogan	117
22	MR. ANDERSON'S VIDEOTAPED DEPOSITION	121
23	WAYNE BERRY'S DEPOSITION READ	123
24	PAUL HUFFARD	
25	Direct Examination by Mr. Bledsoe	196

1	BARRY J. FOLSE	
2	Direct Examination by Ms. Huber	203
3	Cross-Examination by Mr. Hertzberg	215
4	Cross-Examination by Mr. Hogan	216
5	<u>EXHIBITS</u>	<u>EVID.</u>
6	1-9 Affidavits and exhibits of Mr. Stenger,	
7	Mr. Scott and Mr. Folse.	26
8	10 Documents relating to substantive	
9	consolidation	26
10	11-23 Incorporate documents	26
11	24-176 Documents relating to substantive	
12	consolidation	26
13	177-179 Unidentified documents	26
14	189-192 Demonstrative exhibits	26
15	180-188 Various documents relating to solicitations	
16	procedures, affidavits of publication,	
17	compliance with all of the various notice	
18	provisions of the Code and the solicitation	
19	procedures order	26
20	193-204 Corporate documents or bankruptcy	
21	procedure documents	27
22	310 Paragraphs 17-25 of Mr. Berry's declaration	141
23	317 Second amended complaint of prior litigation	138

1 (Call to order of the Court)

2 THE COURT: Good morning.

3 MS. JONES: Good morning, Your Honor. Laura Davis  
4 Jones, Pachulski, Stang, Ziehl, Young, Jones & Weintraub. Your  
5 Honor, four Fleming companies and the related debtors. If I may  
6 refer the Court to the amended notice of agenda for matters  
7 scheduled for hearing this morning. Your Honor, on that agenda,  
8 matters 1-6 are continued.

9 Matters 7 and 10, Your Honor, are related, one being  
10 the motion, one being the motion to file the settlement under  
11 seal. Your Honor, I'm going to need to pass on those until later  
12 in the hearing as there have been some changes that have been  
13 requested and the final documents are not here yet.

14 Your Honor has already signed orders with respect to  
15 matters 8, 9 and 11.

16 Your Honor, then looking at matters 12, which is the  
17 second omnibus section to claims. Your Honor, we filed one  
18 proposed order on the certificate of counsel with respect to this  
19 one. It resolves two more objections and continues the balance  
20 of those that are outstanding until August 17. Your Honor, that  
21 certificate of counsel was filed Friday afternoon and it's docket  
22 9024.

23 Your Honor, matter 13, the sixth omnibus objection to  
24 claim. On that one, Your Honor, we filed two orders under two  
25 certificates of counsel. One order, Your Honor, resolved the



1 Northcutt and Ryder claim which we thought in our agenda said we  
2 would need to continue. But luckily, Your Honor, we were able to  
3 resolve that as well. And so we have submitted that, an order  
4 that does reflect that resolution under certificate of counsel.  
5 And then we also submitted one other order that continues the  
6 balance of the objections that are still open. And those are  
7 docket numbers 9021 and 9022 with respect to those certificates  
8 of counsel.

9 Matter 14, Your Honor, we'll pass over that. That's  
10 with respect to the Put agreement. Mr. Sprayregen will have a  
11 lot to say about that later in the hearing.

12 Matter 15, Your Honor, the sixteenth omnibus objection,  
13 again on this one, we've filed two orders under two certificates  
14 of counsel. One order, Your Honor, resolved the Bradley Limited  
15 Partnership claim, Your Honor, which was the subject of the  
16 sixteenth omnibus and the eighteenth omnibus objection. So under  
17 certificate of counsel, No. 9026, we show the resolution of that  
18 with respect to both, the sixteenth and eighteenth omnibus  
19 objection to claims. Our other certificate of counsel, Your  
20 Honor, continued the balance again of those objections and that  
21 is certificate of counsel, Docket No. 9020.

22 Your Honor, moving on to matter 16. This is the  
23 eighteenth omnibus objection that I just referenced and the  
24 certificate of counsel, Docket 9026, will take care of this one  
25 as well. And I'm pleased to tell Your Honor, that will be the

1 end of the eighteenth omnibus objections to claims. They have  
2 otherwise been all taken care of now.

3 THE COURT: Could counsel on the telephone please mute  
4 their phones? Thank you.

5 MS. JONES: Your Honor, so that brings us to all the  
6 omnibus objections to claims. Your Honor signed the order with  
7 respect to No. 17 on the objection -- I'm sorry, on the agenda.  
8 Thank you for that.

9 Matter 18, Your Honor, the parties have agreed to  
10 continue to the August 17th hearing.

11 Your Honor, that brings us to the most important matter  
12 on the agenda today, which is confirmation. I'm going to yield  
13 to Mr. Sprayregen for No. 19 on the agenda.

14 MR. SPRAYREGEN: Good morning, Judge Walrath. Jamie  
15 Sprayregen from Kirkland & Ellis on behalf of the debtors. Your  
16 Honor, we here on the confirmation hearing on the joint plan of  
17 the debtors and Officer Committee of Unsecured Creditors. I  
18 have, obviously, a lot of detail to go through. Just -- the  
19 headline is we have only one objection to the plan confirmation.  
20 That objection is by Mr. Berry. That objection goes to  
21 feasibility and good faith.

22 So what I would suggest is we actually go through  
23 everything else which I don't think will take long. Then we move  
24 on to address that objection specifically.

25 THE COURT: All right.

10

1 MR. SPRAYREGEN: Your Honor, as I noted, we are down to  
2 one objection with respect to the plan. This is the plan  
3 pursuant to the approved disclosure statement of May 25. We had  
4 approximately 43 objections filed to the plan. I say  
5 approximately because there's 37 formal, some cured objections  
6 and informal objections. 42 out of 43 are resolved. I'm not  
7 going to go through specific detail on those unless people ask,  
8 but there are some of them I need to put settlements on the  
9 records and others are settled in groups.

10 THE COURT: All right.

11 MR. SPRAYREGEN: Initially, though, I would note that  
12 all classes have overwhelmingly accepted the plan. That is,  
13 there were votes in 1B, 3B, 3C, classified 6A, 6B and 7. The  
14 average acceptance was approximately 94 and change percent with  
15 some other a little higher and a little lower depending on going  
16 through them. There's no dispute as to anything to do with  
17 voting. So I won't go through that in detail.

18 We did file an amended ballot report, Your Honor, on  
19 July 23 simply to reflect a stipulation that we're asking to be  
20 approved today with Excel, which assuming it is approved, will  
21 actually increase the 6A, Class 6A approval dollar amount from  
22 the 90 percent to 95 percent. And -- actually, I'm sorry, the  
23 Court has already entered an order approving that. So that has  
24 now gone up to 95 percent. We did have --

25 THE COURT: Well, to the extent that you're going to

1 make anything that's been filed a matter of record, you should  
2 refer to it.

3 MR. SPRAYREGEN: Your Honor, what I had planned to do,  
4 I was going go on for a few minutes, but I have a exhibit list  
5 for all of the trial exhibits for the confirmation hearing. And  
6 I was going to ask that the ones that don't relate to the Berry  
7 objection, unless someone else has an issue, that those be  
8 admitted and then we go to Berry. So I'll get to that in a  
9 moment.

10 THE COURT: All right.

11 MR. SPRAYREGEN: Your Honor, we did file, for the  
12 Court's information, on July 16, after the July 2 voting and  
13 objection date, a number of additional documents were filed, I  
14 believe, in support of confirmation. We filed a proposed  
15 confirmation order and we filed the required plan supplement  
16 which had the Exit (phonetic) facility loan documents with GECC  
17 and the terms new loan facility with Sanctity (phonetic), had the  
18 management incentive plan, the RCT and PCT agreements and the  
19 required disclosures concerning identity of E's and O's and  
20 compensation with respect to the three entities that will exist  
21 on Exit.

22 I would note, Your Honor, Ms. Jones referenced the  
23 Sanctity Put Agreement. The Court, if you recall several  
24 hearings ago, had approved fees related to that and had continued  
25 the confirmation equivalent to the Put Agreement itself. There's

1 no objections to that and we're now asking for that to be  
2 approved separate from the confirmation assuming a confirmation  
3 order were entered it's imbedded in that. If it's not, we  
4 obviously don't need it to be approved.

5 All of the documents that I just referenced were served  
6 on all objecting parties including the one extant objection, the  
7 committees, the U.S. Trustee and counsel to the lenders on July  
8 16th.

9 We also filed on July 20 the Core-Mark Newco Articles  
10 of Incorporation. And on Friday, to help the Court and the  
11 parties, we did file a risk of resolved objections with backup  
12 documentation attached to that showing the objections that were  
13 existing as of Friday which there were four of them at that  
14 point. As I said, we're down to one. But we listed the  
15 resolution of the other objections and attached the evidence, the  
16 written confirmation evidence from the opposing party of that  
17 resolution.

18 THE COURT: Do you have a copy of that?

19 MR. SPRAYREGEN: Yes, I do, Your Honor. If I may  
20 approach.

21 THE COURT: You may.

22 (Pause)

23 MR. SPRAYREGEN: Okay. Your Honor, unless the Court  
24 desires, I wasn't planning on going through the mechanics and  
25 workings of the plan. I think those have all be said of record.

1 And I'm happy to discuss exactly how the plan works, separate and  
2 apart from how it affects the Berry objection which we will  
3 obviously get into at that point. But none of those seem to be  
4 an issue at this point.

5           So let me turn to the resolved objections and the  
6 document I just handed you I think will be helpful to that. As I  
7 noted, there were 37 formal plan objections, 4 cured objections.  
8 The U.S. Trustee did to file an objection, but we continue to  
9 extend their time to object as we worked out their issues and  
10 ultimately did work out their issues. There was one reservation  
11 of right filed by Deloitte and Touche. That doesn't complete fit  
12 with the amended agenda because of the way people file their  
13 objections, but if you find it on the agenda, it says there were  
14 27 formal objections filed including one reservation of rights,  
15 that's because there were 12 formal withdrawals, so they don't  
16 show up on that. And the four cured objections are listed  
17 separately.

18           The objections fall into a couple categories, so I can  
19 get through them actually fairly quickly. Out of the 43, there  
20 were 13 taxing authority objections which, in essence, went to  
21 interest rate on the priority tax claims. And we did agree to  
22 provide a 5 percent interest rate with payment over three years  
23 for Class 1B. And 5 percent over six years for unclassified  
24 priority tax claimants which is actually better than the  
25 treatment solicited. And that resulted in the resolution of

1 those 13 taxing authority objections. Those are -- if you need  
2 it, agenda items 19 A, B, D, H, W and Z. And there were seven  
3 formal notices of withdrawal associated with that. On the  
4 objection chart, Your Honor, those are 1-13.

5       There were another 10 objections filed relating to a  
6 clarification sought with respect to a setoff or recoupment of  
7 defenses being preserved. And we have confirmed that there were  
8 being preserved by adding some clarifying language in the  
9 proposed plan to be confirmed, which as I said, amendment and it  
10 addressed those objections and in particular, Atlantic Coast  
11 Warehouse asked for that additional comfort in the confirmation  
12 order also, so we helped -- in the proposed order, we put it in  
13 there. Those were agenda items 19F, J, N, O, P, S, U, V and X.  
14 And those also were on the notice of withdrawal. And on the  
15 objection chart it's 14 to 23.

16       Then we had a number of miscellaneous objections  
17 resolved. There were two PACA (phonetic) objections which were  
18 resolved by making it clear that the PACA trust would cover any  
19 allowed PACA claims as opposed to just principle amount of PACA  
20 claims. So whatever the amount ultimately is, if it's more than  
21 principle that is covered. That's agenda items 19I and R. And  
22 on the objection chart 27 and 28.

23       Next objection was of some retailers concerning one of  
24 the FSA reserve claimants. And they wanted, in essence, to  
25 clarify that we were invading the FSA reserve which we confirmed.

1 And that's objection chart 33, agenda item 19L. So that resolved  
2 that objection.

3 The U.S. Trustee requested several changes to the  
4 proposed plan or confirmation order. There were some extensions  
5 of the proposed dates for a final professional obligations, some  
6 issues concerning confirming quarterly fees would continued to be  
7 paid. And that was standard substantive consolidation and  
8 timeliness to claims objections and clarifications concerning  
9 estimation, procedures for claims and payment of indentured  
10 trustee's fees. All of those were issues raised by the U.S.  
11 Trustee and were resolved in places in the plan and proposed  
12 confirmation order. At the right time, Your Honor, we have a  
13 blacklined proposed confirmation order and proposed plan that  
14 show that changes and a few others necessitated by the various  
15 settlements with people.

16 Your Honor, CHEP USA, the -- there was a stipulation  
17 filed Friday resolving that claim. Your Honor had previously  
18 denied a preliminary injunction based on our cash levels and, in  
19 essence, we resolved concern that that might be effective post-  
20 effective date by providing that if the case on hand dips below  
21 the amounts asserted in CHEP's claim, they'll be able to trace  
22 that amount against the PCT from that point forward. That was  
23 objection chart 29 and Item 19C.

24 THE COURT: If the cash in the PCT Folse below?

25 MR. SPRAYREGEN: No. If -- yes. They were concerned



1 about how --

2 THE COURT: And they can trace what?

3 MR. SPRAYREGEN: Your Honor, the PCT has many assets  
4 other than straight cash. So they're concerned that the ins and  
5 outs and if at some point the rules of tracing would be  
6 interrupted which is sort of the reason that the Court denied the  
7 preliminary injunction in the first place because we weren't  
8 getting there. We were just essence preserving the status quo.  
9 I can --

10 THE COURT: I'll look at the language.

11 MR. SPRAYREGEN: Okay. Thank you. Your Honor, there  
12 was an objection by the United States on behalf of the U.S. DA,  
13 the IRS and the DCA. We provided some clarifying language with  
14 respect to some issues they had with respect to interest and the  
15 application of the proposed releases only applying to people who  
16 voted in favor of the plan or -- in favor of the plan or entities  
17 that had voted in favor of the plan. The item only applies to  
18 agencies as opposed to the entire United States government.

19 Now, Your Honor, Domino Foods had a reclamation  
20 objection and we resolved their administrative claim in an agreed  
21 amount of \$65,000 and change, and preserved those post-petition  
22 deliveries made in the ordinary course of business and other  
23 rights were preserved. That's agenda item 19G and objection  
24 chart 36.

25 Your Honor, Jackson Capital objected as a lead



17

1 plaintiff for the class action, securities claimants are pending  
2 litigation elsewhere. That objection has been resolved through a  
3 proposed stipulation which again provides confirmation that the  
4 proposed releases with respect to the D's and O's only applies to  
5 those who voted in favor of the plan. And the lead claimants on  
6 -- lead plaintiffs on behalf of the class also agree under  
7 certain circumstances that it would apply. And it's also subject  
8 to any necessary approval by the class action court also. And I  
9 have a proposed stipulation we can show you on that at the right  
10 time.

11           The counsel to one of the insurance companies wanted me  
12 to confirm that the language in the proposed stipulation that was  
13 requested by the class claimants that goes to the issue of that  
14 nothing we're doing in the plan it purports to impair insurance  
15 coverage. It goes both ways. That is it doesn't diminish or  
16 increase whatever rights there are to insurance and does not  
17 effect whatever rights they may have, if any, to pursue rescission  
18 actions with respect to the D and O insurance. It doesn't go to  
19 that issue.

20           THE COURT: Okay.

21           MR. SPRAYREGEN: Your Honor, there was an objection by  
22 ACE which is really a casualty insurance company. And that has  
23 been resolved and I've been asked to read a portion of the  
24 settlement, it's a couple paragraphs, into the record to confirm  
25 that objection. We briefly amended the -- I'm sorry, recently

1 amended the plan on Friday to provide that certain provisions  
2 with respect to ACE are deleted. In essence, there was a dispute  
3 as to whether something can be assumed or rejected, and indeed,  
4 whether it's even executory.

5         Due to the dispute, we provided that it would be  
6 rejected and that is not objected to at this point subject to,  
7 basically, reservation of rights language where ACE has reserved  
8 all of its rights to seek treatment as a Class 3A secured claim  
9 and maintain that notwithstanding any purported rejection of any  
10 of its policies, programs, agreements and any related agreements,  
11 which we're defining as the ACE agreements, all terms,  
12 provisions, conditions, limitations and/or exclusions contained  
13 in the ACE agreements remain unmodified and continue in full  
14 force and effect. And that ACE's rights, claims and/or defenses  
15 under the agreements, including without limitation, it's right  
16 and sole discretion to pay public claims shall not be impaired by  
17 the confirmation order or any injunction contained in the plan.

18         And that confirmation is without prejudice to any of  
19 ACE's rights and/or defenses in subsequent litigation or  
20 arbitration regarding the nature and/or extent of insurance  
21 coverage under these agreements and their rights to access their  
22 collateral and/or proceeds including without limitation the  
23 various reservations of rights set forth in the ACE objections to  
24 confirmation.

25         We're also confirming that we didn't create any

1 insurance coverage that does not exist under the plan. That  
2 would be difficult to do, but we're confirming we didn't. And  
3 that nothing in the confirmation order, if it were to be entered,  
4 should be construed as acknowledgment that the ACE agreements  
5 cover or otherwise apply to any claims, or that any claims are  
6 eligible for payment under any of the ACE agreements.

7 And we also agree that we'll conduct a further review  
8 of the assumption schedule which is the assumed contracts under  
9 the plan to insure that all of ACE's worker compensation  
10 policies, binders, program agreements and other related  
11 agreements are specifically included, to be clear, those ones are  
12 being casualty as being excluded and that the assumption schedule  
13 may be amended by mutual agreement from time to time to actually  
14 reflect this intent of the parties. Those had been inadvertently  
15 omitted previously. So with that, that would resolve the ACE  
16 objection.

17 THE COURT: ACE has a comment?

18 MR. GOLDBERG: Good morning, Your Honor. Leonard P.  
19 Goldberg for ACE. I agree with what Mr. Sprayregen has  
20 represented to the Court and based on that we can withdraw our  
21 objection. I also want to clarify one thing which I have  
22 indicated by notes back and forth with Ms. Bear (phonetic). ACE  
23 filed proofs of claims against each of the debtor subsidiaries  
24 and affiliates because they may be covered -- entities with  
25 coverage under our policies.

1           It's our position that those claims against the  
2 multiple debtors are not identical or duplicative and we would  
3 like to have those claims considered as separate claims to the  
4 extent that any particular debtor claims rights to insurance  
5 coverage under the plan.

6           I understand that because -- the debtor's is that  
7 because the estate is being substantively consolidated, there is  
8 no longer any need to allow all of the claims and that of the  
9 sole remaining claim which has not been either allowed or  
10 disallowed yet can suffice. And that the debtor's position is  
11 that any disputes that would arise in connection with coverage  
12 that was formally provided to any of the now consolidated debtor  
13 affiliates and subsidiaries would be subsumed in that remaining  
14 proof of claim and that -- yeah, that those rights are reserved.

15           MR. SPRAYREGEN: Your Honor, there's obviously a number  
16 of things going on behind me. This is a new one. There actually  
17 is a notice that all duplicative claims would be as soon as the  
18 confirmation is ordered and substantive consolidation is ordered,  
19 there was specific claim objections to all the duplicative claims  
20 providing that to the extent confirmation is ordered and in  
21 compliance with Rule 3007 of the Bankruptcy Rules are that they  
22 would all be disallowed so there's only one estate, so there's  
23 only one claim left.

24           I believe, I'm going to have to check, that ACE's  
25 claims are on there, they had notice, they had the opportunity to

1 object, they did not object on this rule. I think what we ought  
2 to do is pass this and we'll get to this at the end if there's a  
3 remaining objection. I don't know -- I can't tell from what Mr.  
4 Goldberger said whether we have an issue or not.

5 MR. GOLDBERG: I don't think we do and I'm not trying  
6 to create one. I just wanted to understand -- clarify what I  
7 thought, I got a note from the debtor, what the debtor's position  
8 that any of the claims that related to those now consolidated  
9 subsidiaries and affiliates to the extent that they are different  
10 because coverage and claims arise different are now subsumed in  
11 that remaining claim.

12 MR. SPRAYREGEN: Again, Your Honor, I don't know from  
13 standing here, we had a specific list of claims that were  
14 disallowed that people were supposed to object to. I can't tell  
15 from what Mr. Goldberger is saying whether he's trying to undue  
16 what was --

17 THE COURT: I guess what he's trying to say is although  
18 he has one consolidated claim, it does not impair his right to  
19 say that his policy doesn't cover one subsidiary.

20 MR. SPRAYREGEN: If that's all he's saying, I'm fine  
21 with that.

22 MR. GOLDBERG: Yeah. I just -- yes.

23 THE COURT: If it wasn't signed by --

24 MR. SPRAYREGEN: Okay. We can stop there.

25 THE COURT: Thank you.

1 MR. SPRAYREGEN: Thank you, Your Honor. Your Honor,  
2 the other resolution of an individual objection, and I'm just  
3 about done here, on the resolutions was by Mr. Bertram Block  
4 (phonetic) who was a retired Godfrey executive who participates  
5 in a retiree medical plan.

6 We have been informed that we're authorized to state  
7 that their plan objection is withdrawn on the basis that the  
8 debtor has agreed to continue the life-time benefits of Mr. Block  
9 to be paid by the PCT which is exactly our view as what was  
10 reflected in the plan in any event.

11 So that we don't think there's any change, we're just  
12 confirming that, but we are still negotiating over what the  
13 annual cap of that amount should be. And just to get an order of  
14 magnitude, it's somewhere between \$35-45,000. That's the spread  
15 between the bid and the asset, so I assume somehow we're going to  
16 resolve that consensually. And we've also talked about some  
17 potential buyout of Mr. Block from this. Again, that would be a  
18 PCT activity.

19 With that, and to the extent there's any disputes, we  
20 would obviously come back to the Court with respect to those  
21 issues or whatever court this Court directed us to. I'm sorry?

22 MR. HOUSTON: Good morning, Your Honor. Joseph Houston  
23 on behalf of Bertram Block. And please forgive me for being  
24 late. I was a fairly popular guy this morning for some unknown  
25 reason.



1 We are very close, but we do not yet have a final  
2 agreement on this. We do not wish to impede confirmation because  
3 I'm hopeful that we will get to a result. I just want to be sure  
4 that we right this second do not have a final agreement. I'm  
5 hopeful that in a very short time we will. I suspect if we spend  
6 a little bit of time discussing the fine points of this in the  
7 next little bit that we will get to where we need to be.

8 THE COURT: Well, I'm certain that you'll have time  
9 today to resolve that before the confirmation hearing concludes.

10 MR. HOUSTON: Thank you, Your Honor.

11 MR. SPRAYREGEN: Your Honor, as I noted, there were  
12 also four cured objections which were agenda items 19BB through  
13 EE. And those were all resolved in essence by agreeing as to  
14 cure amount or cure process.

15 And finally, I would note that the -- you had already  
16 approved agenda item No. 17, the Excel specialty 3018 motion  
17 claim, a \$34 million administrative claim. Stipulation was filed  
18 on July 22 allowing admin claim 35 percent of the administrative  
19 liability on tax bonds and performance liability is capped at  
20 \$1.5 million. And there's a certification of counsel filed on  
21 that July 22.

22 Your Honor, what I would suggest is we have passed out  
23 prior to the start of the hearing our confirmation trial exhibit  
24 list. And I think I can deal with all of our exhibits that  
25 generally I just went through other than the ones that will be

1 relevant to the extant objection. If I might hand up the exhibit  
2 list.

3 THE COURT: You may.

4 (Pause)

5 MR. LASTOWSKI: Good morning, Your Honor. Michael  
6 Lastoski here for Twin City, one of the D and O carriers. If I  
7 may be heard for just a moment. Earlier, Mr. Sprayregen  
8 addressed one of our concerns relative to the D and O insurance.

9 Just briefly, the plan has a very broad indemnification  
10 provisions. Officer and Directors are indemnified for any claims  
11 related to the debtors. And arguably that would include  
12 liability for avoidance actions.

13 It's -- however, the plan limits the liability to the  
14 amount of D and O insurance. And what we would like to clarify,  
15 which I think Mr. Sprayregen did clarify, is that this is a  
16 limiting paragraph. In other words, the liability is limited to  
17 the amount of D and O coverage and that this language does not  
18 seek to expand D and O coverage to cover claims which would not  
19 ordinarily be covered. And I think he's already done that. We  
20 also had some concerns about preserving our rights, if any, to  
21 rescission. Mr. Sprayregen addressed that as well.

22 The only further refinement I seek is this. This came  
23 up in the context of a stipulation with the plaintiff's class  
24 action lawyers where they were concerned about the continued  
25 existence of D and O insurance. I just wanted a clarification

1 that the statements that were made about our preserving our  
2 rights and our liability being limited to the terms of the policy  
3 extends beyond the class action, but it extends to other claims  
4 as well. I wouldn't want someone at some other future date to  
5 argue that they are being pursued for an avoidance action, for  
6 example, and under the broad indemnity provisions, we have a duty  
7 to indemnify.

8 THE COURT: Okay. All right. That clarification is  
9 acceptable to the debtors?

10 MR. SPRAYREGEN: Yes. I mean I --

11 THE COURT: Okay.

12 MR. SPRAYREGEN: Okay. Your Honor, the exhibit list  
13 that I handed up to you has a list of -- if I can get to the last  
14 page -- 204 proposed confirmation trial exhibits just to make it  
15 easy because there's been varying versions of these. We list  
16 that the confirmation trial exhibit number on the left, where  
17 it's referenced in the agenda letter, if it is, and most of them  
18 are, what the document is in the middle. And there are a number  
19 of affidavits filed on July 16 and they had some of their own  
20 exhibits attached. So we cross-referenced it. So anybody  
21 looking at it from the variety of perspectives ought to be able  
22 to figure out what we're doing.

23 THE COURT: Well, is it -- just a question. Are all of  
24 the exhibits to all of the affidavits being included? Or not  
25 all?

1 MR. SPRAYREGEN: All are, yes.

2 THE COURT: Okay.

3 MR. SPRAYREGEN: So, the exhibits that we have  
4 identified that implicate the remaining objection are exhibits 1-  
5 9 which are affidavits and exhibits of Mr. Stenger, Mr. Scott and  
6 Mr. Folse. Because of the objection, what we're going to do is  
7 put them on as live witnesses and we'll go through 1-9 live and  
8 because those go to both feasibility and good faith.

9 Then Exhibits 177-179 also go directly to the Berry  
10 dispute. And Exhibits 189-192 are demonstrative exhibits which  
11 are really hard copies of those posters you see over on the  
12 right, also go to feasibility. So those are the ones that we  
13 would ask to be admitted into evidence right now.

14 So on the flip side, the ones we would ask to be  
15 admitted into evidence and that don't relate to the Berry  
16 objection would be Exhibit 10, which relates to substantive  
17 consolidation; Exhibits 11-23 which are incorporate documents;  
18 Exhibits 24-176 which all relate to substantive consolidation, if  
19 there's no objection from anybody on; Exhibits 180-188 which are  
20 all of the various documents relating to solicitation procedures,  
21 affidavits of publication, compliance with all of the various  
22 notice provisions of the Code and the solicitation procedures  
23 order.

24 And then 193-204 are either corporate documents or  
25 bankruptcy procedure documents that follow on from all of what I

1 just referenced. And I will just note that the very last exhibit  
2 was just added because we noticed a slight error in the affidavit  
3 of service concerning notice of the confirmation hearing, so we  
4 corrected that and filed that this morning and it was handed  
5 Docket No. 8898. I suspect by the time the hearing's are over  
6 we'll crack 9000, but that was given 8898.

7 Now, I will note, Your Honor, that other than the last  
8 one I just mentioned, 204, in the exhibits we're not asking to  
9 put in evidence or be received in evidence right now, those were  
10 all previously served on July 16 or before on all objectors and  
11 the 2002 list as well as the committees. And so, I don't believe  
12 there ought to be any objections to the admission of all those  
13 exhibits, but I am happy to address them if there are any  
14 objections.

15 THE COURT: Anybody wish to object to the admission of  
16 the exhibits identified? All right. They will be admitted and  
17 made part of the record.

18 MR. SPRAYREGEN: Thank you, Your Honor. Your Honor,  
19 with that, I think we would be ready to move into the evidentiary  
20 part of the confirmation hearing with a couple of preliminaries.

21 We -- the one objector did identify one exhibit in  
22 connection with the confirmation hearing and that was Mr. Berry  
23 himself. We understand that he is not here in Delaware today,  
24 although we're not positive about that. And so, we don't believe  
25 that there's any witnesses by Mr. Berry.

1 We have three witnesses that go directly to  
2 confirmation issues. And as I noted, that's Mr. Stinger, Mr.  
3 Scott and Mr. Folse. We think that direct testimony all in is  
4 maybe an hour and a half of so. And then we do have a pending  
5 motion to estimate Mr. Berry's claim, which procedurally we'll  
6 have to talk about how to handle that in the context of the  
7 confirmation also, but it probably goes together. And we would  
8 have a maximum of four additional witnesses related to that. And  
9 we think the direct case with respect to those four is an hour or  
10 so. So we see two and a half to three hours of direct testimony  
11 on our case. And we're not aware of additional witnesses.

12 And Mr. Liebeler reminds me actually that two of those  
13 are by deposition designations. So that obviously would tend to  
14 accelerate.

15 We obviously are quite hopeful of concluding favorably  
16 actually the confirmation hearing today. We think it's doable.

17 THE COURT: All right.

18 MR. SPRAYREGEN: Obviously it would depend on some of  
19 the objections.

20 THE COURT: Let me hear from the Berry side as to what  
21 they intend to present.

22 MR. HOGAN: Timothy Hogan, Your Honor, on behalf of Mr.  
23 Berry. Your Honor, we submitted documents and declarations, Your  
24 Honor. We'd ask that the Court at least allow those to be  
25 considered in these hearings. As to the --

1 THE COURT: Which declarations are you asking me to  
2 consider?

3 MR. HOGAN: The declarations in support. We've got --  
4 essentially declarations have been submitted in support of our  
5 opposition to the plan. There have been declarations submitted  
6 in support of our opposition to the non-substantive objection.  
7 And to the estimation motion, Your Honor.

8 As to -- we believe there's an evidentiary foundation  
9 with the materials that are in there. They've been submitted --

10 THE COURT: Well, let me hear if there's an objection  
11 to those declarations.

12 MR. SPRAYREGEN: There is, Your Honor. This is a  
13 confirmation hearing where witnesses were to be identified.  
14 Those are out-of-court statements offered for the truth of the  
15 matter asserted. They're clearly hearsay. And --

16 THE COURT: Well, they've by Mr. Hogan, so do we want  
17 to hear Mr. Hogan here?

18 MR. SPRAYREGEN: Your Honor, there is a declaration by  
19 Mr. Hogan, but also one by Mr. Berry.

20 THE COURT: Regarding the review of the data.

21 MR. HOGAN: Yes, Your Honor. I guess, Your Honor, if I  
22 may, Your Honor. We had a -- something that was put over on the  
23 9th hearing, Your Honor, that I think is at least germane to this  
24 morning was the stay --

25 THE COURT: Motion for relief, yes.

1 MR. HOGAN: Much of why I'm here, Your Honor, is  
2 regarding that matter. And it would seem to be at least  
3 something that I thought was going to be addressed prior to the  
4 confirmation hearing, Your Honor.

5 THE COURT: Well, it might have been. I did not get  
6 the debtor's supplemental brief although the debtor says that --  
7 say in their amended agenda they filed it.

8 MR. LIEBELER: Your Honor, I'll make sure we get a copy  
9 of that to you right now. This is Mr. Liebeler for the debtors.  
10 But, by the way, Your Honor, as I recall at the end of the last  
11 hearing the Court had indicated that there would not be an  
12 additional hearing on the motion to lift stay, that the Court  
13 would be prepared to rule on the papers rather than take  
14 additional argument.

15 THE COURT: Had I gotten them, July -- your brief, July  
16 22nd, I might have been prepared to rule on it.

17 MR. LIEBELER: That's fine. I will run down and get  
18 you a copy right now. In fact, may I approach, Your Honor?

19 THE COURT: Yes.

20 MR. LIEBELER: I have a copy with me here.

21 (Pause)

22 MR. LIEBELER: But, Your Honor, I can see if we can  
23 figure out when it was filed and where it was filed because I do  
24 believe we filed it on time. I don't know that.

25 THE COURT: Well, filing doesn't help me. It wasn't



1 delivered to chambers, so.

2 MR. HOGAN: Your Honor, as to -- I believe their case  
3 is going to be also through depositions, Your Honor. Those are  
4 not live witnesses under the local rules. I believe we're  
5 entitled to have live witnesses in regard to these hearings.

6 THE COURT: Well, I'm not -- they're just identifying  
7 what they're presenting. I have not admitted anything in  
8 relation to the Berry objection. So.

9 MR. HOGAN: and I guess the concern is, Your Honor, if  
10 we go to confirmation and then go to the other issues, there are  
11 issues that are bound up, in feasibility that were raised in the  
12 objections to Mr. Berry's claim, particularly the issue of the  
13 indemnities, Your Honor, that the debtors have stated unless Your  
14 Honor is willing to essentially rule that Mr. Berry has no rights  
15 against CNS, that the plan is unconfirmable.

16 THE COURT: Well, I'll hear those issues.

17 MR. HOGAN: Yes, Your Honor.

18 THE COURT: I'm trying to get a feel for how long it  
19 will be.

20 MR. HOGAN: I don't present -- obviously, Your Honor,  
21 mine will be rather brief, I think, Your Honor.

22 THE COURT: Your testimony to the extent they object to  
23 your affidavit.

24 MR. HOGAN: That's correct, Your Honor.

25 THE COURT: All right.

1 MR. SPRAYREGEN: Your Honor, I apologize for the snafu  
2 with the supplemental brief. Ms. Jones informs me that we  
3 believe it was delivered to your chambers Friday morning, but I  
4 know there was a lot of paper going on Friday, so --

5 THE COURT: I didn't receive it, so I don't know where  
6 it went.

7 MR. SPRAYREGEN: So, Your Honor, we have no problem  
8 with actually hearing Berry's confirmation objection in the  
9 estimation motion together. We don't think there needs to be  
10 separate processes. Obviously, they're separate issues, but  
11 we're just saying whatever the Rules of Evidence apply are that  
12 they should apply here. We're not --

13 THE COURT: All right. Any objection to having them --  
14 the estimation and the confirmation heard together?

15 MR. HOGAN: Well, Your Honor, I guess this would an  
16 objection. The confirmation, I understand, has a separate  
17 evidentiary requirement than typical motions that are filed in  
18 contested matters. I don't think the Court is generally  
19 requiring people in a contested matter motion to present live  
20 testimony in the Court, Your Honor.

21 THE COURT: Yes, I am.

22 MR. HOGAN: I apologize, Your Honor. I was under the  
23 impression that most motions are ruled on on the papers.

24 THE COURT: No, not in this court.

25 MR. HOGAN: All right.

1 THE COURT: If it's contested, I hear testimony.

2 MR. HOGAN: Okay, Your Honor. Well, I -- we'll just go  
3 forward as Your Honor thinks best.

4 THE COURT: All right. Well, the debtor can proceed  
5 then.

6 MR. SPRAYREGEN: Two items, Your Honor. One is a  
7 matter of efficiency. There are -- Your Honor, the -- on the  
8 agenda post -- the confirmation hearing post 19, there are a  
9 number of landlord matters which we understand are all  
10 uncontested. I don't know if anybody's here solely for that  
11 issue. And maybe you'd want to take a couple of minutes and get  
12 that out of the way. We're ready to proceed now. But if the --

13 THE COURT: The notices of assumption and assignment?

14 MR. SPRAYREGEN: Right. It's a number of agenda items.

15 THE COURT: We can proceed with that to the extent  
16 there are not objections. And then those parties can leave if  
17 they want to.

18 MR. SPRAYREGEN: Thank you. That would go to -- that  
19 would start with agenda item 23.

20 MS. HARPER: Good morning, Your Honor. Megan Harper of  
21 Landis Rath & Cobb for C&S Acquisition. Your Honor, we have one  
22 item for today that's with respect to agenda item No. 24. Last  
23 week -- or, excuse me, Your Honor, the last hearing, we handed in  
24 a 24th supplemental order approving assumption and assignment.  
25 The order was for contrast, signed and franchise agreements to be

1 assumed and assigned to Piggly Wiggly. That order inadvertently  
2 included a contract with Dave Reinhart. That particular contract  
3 is for a franchise agreement that was noticed for assumption and  
4 assignment to Super Value.

5 We have amended the order and also circulated that to  
6 counsel for Super Value. So I simply ask that we submit -- be  
7 permitted to submit an amended order.

8 THE COURT: You may.

9 MS. HARPER: Thank you, Your Honor.

10 THE COURT: And I'll enter that to correct the error.

11 MS. HARPER: We have nothing further.

12 THE COURT: All right.

13 MR. EVANOFF: Good morning, Your Honor. Bill Evanoff  
14 on behalf of Super Value.

15 THE COURT: Yes.

16 MR. EVANOFF: Again, we only have a limited number of  
17 matters going forward. And both of them are already agreed, I  
18 believe, and submitted under certification of counsel as  
19 reflected on the agenda for today. For agenda item No. 25, there  
20 is a certification of counsel docketed as 8667 that I believe was  
21 filed around, approximately July the 6th for which we've --

22 THE COURT: Give me the docket number again.

23 MR. EVANOFF: The notice -- I'm sorry, the  
24 certification of counsel with proposed order is Docket No. 8667.

25 THE COURT: Okay.

1 MR. EVANOFF: And if it would assist the Court, I have  
2 a copy of the certification of counsel and the proposed form of  
3 order if you would like me to hand that up.

4 THE COURT: You may hand it up. I don't know if I've  
5 entered it or not.

6 MR. EVANOFF: Your Honor, if I may approach.

7 THE COURT: You may.

8 (Pause)

9 THE COURT: All right.

10 MR. EVANOFF: Similarly, with respect to agenda item  
11 No. 32, there was a certification of counsel filed a week ago  
12 with respect to two sets of leases, New York 035 and New York  
13 060, reflected as agenda item 32 on the amended agenda as  
14 certification of counsel and proposed form of order to which  
15 we're requesting an order. And again I have a form of order that  
16 would assist the Court.

17 THE COURT: You may hand that up.

18 (Pause)

19 MR. EVANOFF: And with those matters, Your Honor, I'm  
20 pleased to say we are down to three sets of leases in total from  
21 our starting position of a few 100 and if we're able to resolve  
22 those, they will again be filed under certification of counsel if  
23 that is acceptable with Your Honor.

24 THE COURT: That is fine.

25 MR. EVANOFF: And with that, I have nothing further.

1 Thank you.

2 MS. MELNICK: Good morning, Your Honor. Salinda  
3 Melnik, Edwards & Angell for AWG Acquisition, Inc. and Associated  
4 Wholesale Grocers, Inc. My co-counsel, Mark Benedict, is on the  
5 phone. Our matters that are listed today are numbers 23, docket  
6 numbers and the amended notice of agenda 23, 29 and 38. We do  
7 not have any orders going forward today, Your Honor, but we are  
8 hopeful that we will soon be able to submit under certification  
9 of counsel several orders resolving some of the matters.

10 THE COURT: All right.

11 MS. MELNICK: Thank you. And there's --

12 THE COURT: Thank you.

13 MS. MELNICK: -- one more matter. Thank you, Your  
14 Honor.

15 THE COURT: Thank you. Anybody else?

16 MS. JONES: Your Honor, we had, on the agenda skipped  
17 over matters No. 7 and No. 10. But Mr. Lapowsky, I believe, is  
18 on the phone. Mr. Houston is here. With respect to those, Your  
19 Honor, if I may yield to Mr. Lapowsky to tell Your Honor what the  
20 status of that is.

21 THE COURT: All right.

22 MR. LAPOWSKY: Thank you, Your Honor. This is Robert  
23 Lapowsky and I apologize for appearing by phone, but I have a  
24 hearing at 11:00 in Philadelphia. This matters 7 and 10 relate  
25 to an agreement that was reached between a number of retailers,

1 10 or 12 retailers that I represent, C&S and Fleming. And the  
2 motion was filed in early July, the objection deadline was the  
3 19th and I think that a certificate of no objection was filed.

4 But we discovered a mistake in the agreement after the  
5 -- actually after the objection deadline had past that required  
6 one change to address that mistake. And what I would like to do  
7 with your permission is to describe to you what we were trying to  
8 correct. Mr. Houston has a blackline of the agreement that shows  
9 the change from what was filed, and then see if we can't get this  
10 approved today.

11 THE COURT: All right. Do you have a blackline?

12 MR. HOUSTON: Your Honor, if I may approach, I have the  
13 blackline that Mr. Lapowsky is going to refer to as I have it  
14 under seal to leave with the Court.

15 THE COURT: All right. You may hand it up. I assume  
16 the changes are for the parts that are not to be kept under seal?

17 MR. LAPOWSKY: That's correct.

18 THE COURT: All right.

19 MR. LAPOWSKY: There's only one portion that is under  
20 seal and that is the consideration being paid for the notes, the  
21 C&S, and that doesn't change.

22 THE COURT: All right.

23 MR. LAPOWSKY: Judge, the agreement, these retailers  
24 all had supply agreements with Fleming. A number of them had a  
25 notes, either forgiveness or promissory. Some of them had

1 accounts receivable that they owed to Fleming and some of them  
2 had granted security interests to Fleming to cover various  
3 things.

4           The agreement that was reached involved the payment of  
5 a dollar amount to C&S for the assignment of the notes to another  
6 client of mine, Affiliated Foods. The payment of a compromised  
7 amount for the accounts receivable, the rejection of the supply  
8 agreements and releases all around between all the different  
9 parties to the agreement, including releases of security  
10 interests.

11           The mistake that we discovered was that one of the  
12 retailers, a retailer by the name of Something More, was unique  
13 in that all the other retailers were dealing only with C&S. That  
14 is C&S had their designation rights. C&S had been assigned their  
15 notes, whether they be promissory or forgiveness. And AWG was  
16 not involved at all.

17           The difference with Something More is that the  
18 Something More supply agreement was designated to AWG and not to  
19 C&S. And Something More executed two notes, one was promissory,  
20 the other was forgiveness. The promissory note did go to C&S,  
21 but the forgiveness note didn't. It went to AWG. So the  
22 agreement as drafted and as put out for approval was too broad as  
23 it related to Something More because it would have affected the  
24 rejection of the supply agreement which C&S didn't have the right  
25 to do. It would have affected the release of security interests



1 that related to the forgiveness note which nobody had a right to  
2 do other than AWG.

3 When we discovered that, we went back into the document  
4 and made three changes. And if you have the document there in  
5 front of you, I can show you where they are.

6 THE COURT: I have it.

7 MR. LAPOWSKY: In -- on the first page of the  
8 blackline, you should have a whereas clause at the very bottom of  
9 the page that's blacklined.

10 THE COURT: Yes, I have it.

11 MR. LAPOWSKY: What that does is that it takes the  
12 defined term, FSA, which is the supply agreements, and it carves  
13 out of the defined term the supply agreement with Something More  
14 so that through the rest of the document, whether it references  
15 to the FSA, for instance to them being rejected, it won't impact  
16 the FSA that is designated for assignment to AWG.

17 THE COURT: Okay.

18 MR. LAPOWSKY: So that was the first change. The  
19 second change was on the next page in Section 1B. The retailers  
20 that I represent, Judge, had all filed an omnibus objection to  
21 the assignment of the supply agreements and a request for the  
22 termination of the sale of the note should be voided because  
23 there were executory integrated with the supply agreements.

24 In 1B, we had said that all the retailers would  
25 withdraw that objection, but we can't do that for Something More.

1 Something More needs to keep theirs alive. We do have a pending  
2 settlement with Something More that will be noticed up  
3 separately, but as of right now, Something More needs to retain  
4 its position in that omnibus objection. So that's what happens  
5 in 1B.

6 THE COURT: All right.

7 MR. LAPOWSKY: Then, the next change, Judge, is in 8F.  
8 And all this does is carves Something More out of all the  
9 releases that are given in the agreement so Something More  
10 doesn't get releases, it doesn't give releases and it preserves  
11 the -- any security interests which were granted to secure the  
12 forgiveness note or preserve under 8F.

13 THE COURT: Okay.

14 MR. LAPOWSKY: And Judge, that's all the changes that  
15 were made to the document that was circulated. We believe that  
16 the changes don't negatively impact anyone other than Something  
17 More. And Something More is obviously negatively impacted  
18 because they're getting a reduction in the scope of the release  
19 that they had gotten, but they were never entitled to that  
20 release to begin with. And I represent Something More and  
21 they've consented to it.

22 And I believe that this -- these changes have been  
23 reviewed by Mr. Benedict on behalf of AWG, and I believe that he  
24 agrees that they get us where we need to be. And I believe  
25 they've also been reviewed by C&S although I'm not certain of

1 that. But again, I don't think any of the changes that we've  
2 made negatively impact C&S.

3 MR. BENEDICT: May it please the Court, Your Honor,  
4 Mark Benedict for AWG. Mr. Lapowsky's correct, AWG has reviewed  
5 that and those terms are now acceptable to AWG.

6 THE COURT: All right. Anybody else? I take it that  
7 all other parties then are agreeable. All right.

8 MR. LAPOWSKY: Judge, just before we leave these  
9 matters, we will need in connection with this agreement an order  
10 rejecting one of the -- a lease, an Adrian's (phonetic) lease.  
11 I'm not sure whether the Fleming representatives are prepared  
12 today to address that. There is a pending motion. I don't think  
13 it's on the agenda for today, but I think we will have to provide  
14 you with an order rejecting that lease as of the closing date  
15 under this agreement. Is there anyone from Fleming that can  
16 speak to that?

17 MS. JONES: Your Honor, we're going to need to take  
18 care of that offline and provide it under certificate of counsel  
19 if necessary.

20 THE COURT: All right. You can submit it under  
21 certification of counsel. Do you have a form of order on the --  
22 to approve the amended agreement?

23 MS. JONES: I do, Your Honor. The form of order does  
24 not change actually, it's what Mr. Lapowsky has informed me,  
25 because this settlement agreement itself reflects the one change.

1 Or the changes that he outlined. Your Honor, we also have a  
2 proposed form of order with respect to the under seal motion as  
3 well.

4 THE COURT: All right. You may hand those up.

5 MS. JONES: Thank you.

6 MR. LAPOWSKY: Judge, I'm not -- if it's the same order  
7 that's being handed up to approve the agreement that was attached  
8 to the original motion, maybe we should just interlineate that  
9 it's approved in the agreement as modified on the record today.

10 THE COURT: I --

11 MR. LAPOWSKY: I think it makes reference to the  
12 agreement that was attached to the motion to approve.

13 THE COURT: Well, it simply says the motion is granted.

14 MR. LAPOWSKY: I don't have it in front of me.

15 MS. JONES: Your Honor, we'll be glad to provide any  
16 words -- motion as modified on the record at today's hearing.

17 THE COURT: All right. Why don't you add those.

18 MR. SPRAYREGEN: Your Honor, a couple of --

19 THE COURT: Before we go further, is the reference  
20 number on the order to seal should reference both of the  
21 settlement agreements that you filed under seal. It only has one  
22 reference number. I assume the later one.

23 MR. SPRAYREGEN: We'll address that.

24 MR. LLUHLIER: Your Honor, Chris Lluhlier. The  
25 settlement agreement that was handed up today actually hasn't

1 been filed with the Court yet. It's not on the docket. It's  
2 being presented to Your Honor.

3 THE COURT: Well, are you going to file it?

4 MR. LLUHLIER: Sure. We certainly can.

5 THE COURT: I think you should.

6 MR. LLUHLIER: Okay.

7 THE COURT: Do you need it back?

8 MR. BENEDICT: Yeah, that blackline you would need to  
9 black out the purchase price for the note because it -- that's  
10 the redacted item and that is in the blackline.

11 THE COURT: I have that, but they handed up the  
12 unredacted copy which will be filed under seal.

13 MR. BENEDICT: Good.

14 THE COURT: In accordance with our procedures then.

15 MS. JONES: (Attorney away from mike)

16 THE COURT: You may hand it up. And I'll enter the  
17 order approving the settlement agreement as modified on the  
18 record. And I'll look for the form of order on the -- sealing  
19 the complete settlement agreement.

20 MS. JONES: Your Honor, we'll submit that as soon as we  
21 get it --

22 MR. SPRAYREGEN: Your Honor, that gets us back to  
23 agenda item 19, the plain copy.

24 MR. LAPOWSKY: Your Honor, may I be excused?

25 THE COURT: You may.

1 MR. LAPOWSKY: Thank you.

2 MR. SPRAYREGEN: Then we've got -- for clarity that  
3 would be the only remaining item on the agenda other than the  
4 Sanctity agreement approval which is fairly long with the  
5 confirmation. Your Honor -- I'm going through the resolutions of  
6 objections. They're all contained in the proposed amendments to  
7 the plan and confirmation order and if we get that far, we -- I  
8 can go through. And we passed them out to everybody here before  
9 the hearing.

10 With the exception of two stipulations I mentioned, one  
11 with Jackson and one with CHEP, and I have those if the Court  
12 wants them or we can wait till later. I didn't know if you --

13 THE COURT: Well, let's do it now.

14 MR. SPRAYREGEN: Okay. Let me -- we're not asking for  
15 them to be signed because they don't have to be signed in  
16 connection with the confirmation.

17 THE COURT: All right.

18 MR. SPRAYREGEN: The other small housekeeping matter,  
19 Your Honor, is we did have a number of witnesses that were here  
20 solely for the prospect that they would need to testify in  
21 connection with substantive consolidation matters. Due to the  
22 amount of objection there in the admission in evidence of their  
23 affidavits, we don't see the necessity of that, but before we  
24 release them, some of them have various places to go, I just  
25 wanted to confirm that it would be alright for them to be

1 released.

2 THE COURT: Anybody object? All right. Since your  
3 affidavit's been admitted into the record, they may be released.

4 MR. SPRAYREGEN: Your Honor, with that, we're prepared  
5 to get into addressing the Berry objection. And in mean, Mr.  
6 Liebeler is going to handle that. He has been the Kirkland Ellis  
7 lawyer handling that process for quite some time.

8 I would note though preliminarily and he'll handle the  
9 witnesses and the factual presentation and most of the argument,  
10 but to the extent of some of the pure bankruptcy arguments, I  
11 would step up. So I wanted to say that in advance. And I  
12 thought we ought to start and it seems to me that before we get  
13 into all of the evidentiary presentation, if we just look at the  
14 plan confirmation objection, it really is based on --

15 THE COURT: Well, let's save argument.

16 MR. SPRAYREGEN: Okay. We'll start with the evidence.

17 THE COURT: Let me hear the evidence. Somebody want to  
18 give Mr. Hogan a space at the table.

19 MR. SPRAYREGEN: Your Honor, I mentioned Mr. Liebeler  
20 was going to handle the Berry specific items. The -- Mr. Stenger  
21 and Mr. Scott will be presented by Mr. Paris and then Mr. Folse  
22 will be presented by Ms. Huber. And then we'll move on to the  
23 Berry specific items.

24 MR. PARIS: Good morning, Your Honor. Andrew Paris for  
25 the debtors and Kirkland & Ellis. If you just give me a moment,

1 I'll set the courtroom up for the testimony.

2 (Pause)

3 MR. SPRAYREGEN: Your Honor, also just to clarify as a  
4 reminder, while we have these witnesses to be presented to be  
5 presented in connection with the Berry objection, their testimony  
6 obviously goes to support plan confirmation in general. We had  
7 submitted affidavits of theirs, but Mr. -- and those were -- I  
8 went through on the exhibit list, but --

9 THE COURT: They've been admitted, yeah.

10 MR. SPRAYREGEN: No, no, no, those weren't admitted  
11 because Mr. Hogan asked for live testimony with respect to these  
12 three witnesses. So these are the ones they -- that I asked not  
13 -- that I didn't ask to be admitted right now.

14 THE COURT: I understand that. The only ones that  
15 you're talking about, that I just released, have been admitted.

16 MR. SPRAYREGEN: Those have been admitted.

17 THE COURT: All right.

18 MR. HOGAN: Your Honor, I don't want to slow things  
19 down. As far as the Exhibits 1-9, Your Honor, I don't have a  
20 problem with having those admitted, Your Honor. Those are Mr.  
21 Stenger --

22 THE COURT: And Mr. Scott?

23 MR. SPRAYREGEN: They are here, they're ready to  
24 testify. If Mr. Hogan is reserving cross-examination right, I'm  
25 not sure if he is, if he is, well, that would be helpful to



Stenger - Direct/Paris

47

1 present them for that. If he's not, we could just have the  
2 affidavits admitted.

3 MR. HOGAN: I would like to cross them, Your Honor, so  
4 however counsel would like to proceed.

5 THE COURT: All right. You may proceed as you wish.

6 MR. SPRAYREGEN: Thank you.

7 MR. PARIS: Your Honor, we call Mr. Ted Stenger.

8 THE COURT: Good morning.

9 THE CLERK: Place your hand on the Bible. Please state  
10 your full name and spell your last name for the Court.

11 THE WITNESS: Edward Ted Stenger, S-T-E-N-G-E-R.

12 EDWARD TED STENGER, DEBTOR'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. PARIS:

15 Q Mr. Stenger, you've testified a number of times in this  
16 Court, so just very briefly, can you summarize your position and  
17 your role on this bankruptcy.

18 A Yes. I'm employed by Alex Partner Services. My firm has  
19 been retained to work for Fleming. I am working a full-time  
20 basis for approximately the last year as the chief restructuring  
21 officer of the Fleming companies.

22 Q What was your role in the drafting of the plan of the  
23 organization, the disclosure statement and the exhibits thereto?

24 A The personnel from the Fleming companies as well as from  
25 Alex Partner Services that were involved in preparing that

Stenger - Direct/Paris

48

1 generally reported up through me. So, I was intimately involved  
2 in the development both initially and in the final drafts of  
3 those documents.

4 Q Did you have any role in the exhibits to the disclosure  
5 statement?

6 A Yes. The exhibits specifically 3 -- Exhibits 3 and 4 were  
7 prepared by the staff of Fleming as augmented by temporary  
8 employees from Alex Partners. That process and those individuals  
9 reported directly to me.

10 Q And, sir, I'd like to direct your attention to this board  
11 over here on the right that we have marked as Exhibit 189.

12 MR. PARIS: And Your Honor, if I may approach, we have  
13 copies for you.

14 THE COURT: You may. And I assume for Mr. Hogan and  
15 anybody else who may be interested.

16 MR. PARIS: Yes, we do.

17 A Can I get one? Thank you.

18 Q Mr. Stenger, what does Exhibit 189 show?

19 A Exhibit 189 is the summary that was prepared based on  
20 information that's in Exhibit 3 of the disclosure statement with  
21 some adjustments that were put in that are included in Mr.  
22 Folse's declaration.

23 Q What are the three entities that are shown on that board?

24 A The three entities are the three entities that come -- are  
25 included in -- come out of our plan of reorganization. And that

Stenger - Direct/Paris

49

1 would be Core-Mark Newco which is the reorganized convenience  
2 business; the post-confirmation trust; and the reclamation  
3 creditors trust.

4 Q And of these three, which will you be discussing today in  
5 your testimony?

6 A I'll be discussing Core-Mark Newco.

7 Q Okay. Mr. Stenger, what businesses will go into Core-Mark  
8 Newco after confirmation?

9 A All of the business that was formerly referred to as the  
10 Fleming Convenience Store business will be included in Core-Mark  
11 Newco.

12 Q And have you and your staff done an analysis of Core-Mark  
13 Newco's assets and liabilities?

14 A Yes, we have.

15 Q And based on that analysis, what is the estimated value of  
16 Core-Mark's assets as of July 31st, 2004?

17 A We're estimating that the assets would have a book value of  
18 about \$468 million which is the last number under the total on  
19 the left-hand side here for Core-Mark Newco.

20 Q And what would be the value of Core-Mark's liabilities as of  
21 the same date?

22 A The liabilities are expected have a book value of about \$320  
23 million.

24 Q At inception, what is the estimated value of Core-Mark  
25 Newco's shareholder equity?

Stenger - Direct/Paris

50

1 A It would be about 140 million, basically the subtraction of  
2 the liabilities from the assets.

3 Q And based on your projections as of July 31st, 2004, how are  
4 the current assets compared to the current liabilities?

5 A Current assets would be over twice the level of current  
6 liabilities.

7 Q So, sir, how would you characterize Core-Mark's financial  
8 strength at inception?

9 A I think it will be very strong. It's coming out with a  
10 nicely capitalized balance sheet with lots of working capital  
11 available to it. And a Exit facility that provides for adequate  
12 liquidating both at closing and going forward.

13 Q Have you also projected the level of Core-Mark's assets and  
14 liabilities on a going forward basis?

15 A Yes. We've made projections to the end of calendar year  
16 2008.

17 Q I'd like to direct your attention to the binder that's in  
18 front of you. Within that binder at Tab 3 should be Exhibit 3.

19 THE COURT: What binder are we talking about?

20 MR. PARIS: This binder which I -- may I approach?

21 THE COURT: You may.

22 Q Sir, do you recognize Exhibit 3?

23 THE COURT: For the record, can -- has this been marked  
24 as a debtor's exhibit?

25 MR. PARIS: Yes. This is Debtor's Exhibit 3.